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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	
Telecommunications Act of 1996	)	CC Docket No. 96-115
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other Customer	)	
Information	)	

COMMENTS OF SPRINT CORPORATION

Sprint Corporation, ("Sprint:") on behalf of Sprint Communications Company, L.P., Sprint Publishing & Advertising, Inc., and the Sprint Local Telephone companies, submits its Comments in response to the Commission's May 17, 1996 Notice of Proposed Rulemaking ("NPRM") in the above captioned docket.

I. Introduction

Section 222 (47 U.S.C § 222), adopted as part of the Telecommunications Act of 1996,[1] imposes on all carriers certain obligations with regard to maintaining the confidentiality of Customer Proprietary Network Information ("CPNI"). As noted by the Commission, Section 222 became effective immediately upon enactment of the 1996 Act and therefore no implementing regulations are required.[2] However, in response to the requests of several parties, the Commission issued this NPRM to "interpret and specify in more detail a telecommunications carrier's obligations under Section 222."[3] Sprint agrees that such interpretative regulations will

[1] Pub. L. No. 104-104, 110 Stat. 56 (1996), codified at 47 U.S.C. §§ 151 et seq. (the "1996 Act").
[2] NPRM at ¶ 8.
[3] Id. at ¶ 15.

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be helpful in ensuring that customers and carriers alike know what rights are granted and what obligations imposed by Section 222.

The Commission states at the outset that it "believe[s] that Congress sought to address both privacy and competitive concerns by enacting Section 222."[4] Sprint agrees with the Commission's reading of the 1996 Act and will, when appropriate, address how these concerns are impacted by the Commission's proposed interpretations.

II. Section 222 permits States to impose additional, but not conflicting, requirements.

The Commission seeks comment on whether Section 222 precludes the States from imposing additional CPNI or other privacy obligations on carriers (¶ 17.) Nothing in Section 222 indicates that Congress intended to preempt the States from imposing additional obligations or requirements. However, conflicting or inconsistent State requirements must be precluded so as to not thwart the Commission's exercise of its authority.[5]

III. The Commission's proposed definition of "telecommunications service" is appropriate in the short term.

Section 222(c)(1)(A) authorizes a carrier to use CPNI obtained from the provision of a telecommunications service solely to provide "the telecommunications service from which such information is derived"; however, it does not provide a definition of "telecommunications service." In the NPRM, the Commission proposes (at ¶ 22) that there be three distinct telecommunications services: "local (including short-haul toll); interexchange (including interstate,

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[4] Id.

[5] For example, if the Commission permits oral consent to the use of CPNI, as Sprint believes it should, a State requirement for written consent would be inconsistent and is precluded from being adopted The Commission notes (¶16) that its preexisting CPNI rules preempted inconsistent State requirements and that this preemption was upheld in California III, 39 F.3d 919, 933 (9th Cir. 1994). Preemption of state requirements that are inconsistent with the Commission's interpretation of Section 222 would likewise be preempted.

intrastate, and international long distance offerings, as well as short-haul toll); and commercial mobile radio service (CMRS)."[6]

In the short run, the Commission's proposal is adequate to meet reasonable privacy needs and to address competitive concerns. However, the Commission also asks for comment on whether:

> [C]hanges in telecommunications technology and regulation that allow carriers to provide more than one traditionally distinct service (e.g., LECs and IXCs may begin providing each others' service) may impact how carriers would implement the requirements of Section 222 to restrict use of CPNI from one telecommunications service to another.[7]

Sprint believes that these changes, when they occur, dictate that the three distinct categories of telecommunications services proposed by the Commission will have to change to recognize market driven service integration. Sprint proposes that the Commission adopt the position that the distinction between local and interexchange services will effectively disappear for an entity selling both services on an integrated basis if such entity does not possess market power. To the extent an affiliated entity retains market power such affiliated entity's CPNI may not be shared with the nondominant entity. Sprint believes this structure correctly balances legitimate privacy expectations with legitimate concerns and needs related to fair competition.

Sprint believes that customers choosing an integrated product will expect their provider to have and use information regarding all of the services provided by that company to that customer. If use of information on integrated accounts is limited, Sprint believes the customer will be confused and annoyed when the carrier proves incapable of providing access to all of the

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[6] NPRM at ¶ 22. In the NPRM the Commission does not provide an explanation of all the services encompassed by "local" other than to include short-haul toll. Sprint's believes that "local" should include local usage, business and residence end-user dialtone, and services such as Caller ID, Call Waiting and other similar Custom Calling Features that are tariffed in LECs' local tariff.

customer's information in order to provide complete customer service on the account.[8] Sprint's proposal will prevent such customer confusion and annoyance. However, in order to avoid potential competitive abuses that could occur, Sprint believes the elimination of the distinctions must be limited to entities that do not possess market power.

Section 222(c)(1)(B) provides that CPNI derived from the provision of a telecommunications service may be used in the provision of "services necessary to, or used in, the provision of such service." The Commission seeks comment (¶ 26) concerning what services are "necessary to, or used in, the provision of such service." Sprint believes that installation, maintenance, and repair should obviously qualify as components of included services and indeed must so qualify to ensure proper and satisfactory customer service. Sprint does not believe that any customer would expect anything less.

IV. Oral consent, after notice of CPNI rights, is valid.

Section 222 allows a carrier that obtains CPNI by virtue of its provision of a telecommunications service to a customer to use that CPNI for unrelated telecommunications service or other purposes with customer consent. The Commission seeks comment (¶ 28) on whether consent can be validly given without the customer having been first informed of the CPNI protections afforded by the 1996 Act. Sprint agrees that customer consent should mean informed consent. Sprint believes that annual, written notification is sufficient to provide a basis for informed consent and to meet both legal and educational requirements. There is no need for the Commission to specify what the notice must contain. Prior approval of CPNI notices is not

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[7] NPRM at ¶ 22.

[8] See, e.g., P.L. 104-104, Communications Act of 1995, House Report No. 104-204(I), July 24, 1995, 104th Cong., 1st Sess., 1995 WL 442504 (Leg.Hist.) "Customers, . . . rightfully expect that when they are dealing with their carrier concerning their telecommunications services, the carrier's employees will have available all relevant information about the service."

necessary because any claims that a notice is deceptive or insufficient can be addressed through complaint proceedings and other challenges to improper use of CPNI. Carriers whose notification is found wanting bear the risk of liability for that failure. Accordingly, carriers should be allowed to craft notices on their own.

The Commission also seeks comment on whether consent must be written (¶ 29) and, if oral consent is allowed, whether oral consent can be given simultaneously with an outbound telemarketing call. (¶ 30.) There is no reason to require written consent once a telemarketer has a customer on line or to require a telemarketer to place a second call to obtain consent to market services. As the Commission proposes (¶ 32) carriers will bear the burden of proof associated with oral consent in the event of a dispute and abuses can be adequately addressed in the event a carrier cannot produce credible evidence that a valid consent was received.

Additionally, Sprint believes that when a carrier implements a local PIC change for a customer, the new carrier should receive from the incumbent provider a snapshot of the customer's local service configuration. The act of finalizing a primary local carrier ("PLC") change indicates an agency relationship between the new local carrier and the customer which represents a consent to transfer the customer's local service configuration to the new PLC. Written authorization should not be required in this case. Rather, the carrier implementing the change and receiving the local service configuration bears the burden of proving that the change was legitimate. Customer privacy expectations will not be abused because customers will expect that a change in PLC will not create any interruption of their service. Customers will expect continuous service and if the same is not forthcoming, the development of local competition will be impeded.

Finally, a customer's informed consent should be valid until it is affirmatively revoked by the customer.

V. All providers of exchange telephone service must provide subscriber listings to publishers of directories.

Section 222(e) requires providers of telephone exchange service to provide subscriber list information in a nondiscriminatory fashion to any person for the purpose of publishing directories in any format. This provision must be construed as applying to all providers of telephone exchange services; incumbent LECs and new, competitive LECs alike.

Subscriber information is defined in Section 222(f) (3)(A) as including a subscriber's primary advertising classification and the Commission requested comment (¶ 44) on the meaning of primary advertising classification. Sprint believes that the primary advertising classification is yellow page heading, chosen by the local exchange subscriber for placement of the basic yellow page listing that is typically provided by LECs to their business customers. However, primary advertising classification does not include any subsequent classifications or headings sold by yellow page sales representatives. Such sales of additional classifications are not sales of telecommunications services, rather they are advertising sales and are not, therefore, covered by Section 222.

It is also clear that subscriber list information should not include nonpublished or nonlisted numbers. The purpose of Section 222 is to insure that independent directory publishers can publish complete directories. Because nonpublished and nonlisted numbers are not, at the customer's request, to be listed in directories, the provision of restricted subscriber listings (name, address, telephone number) is not required.[9]

[9] Generally, nonpublished numbers are not listed in either the white page directories or directory assistance and accordingly nonpublished numbers would not be provided for either directory. Nonlisted numbers, on the other

The Commission also seeks comment (¶ 46) on how a provider of telephone exchange service can ensure that the person seeking subscriber lists is doing so for the purpose of publishing a directory. A provider of telephone exchange service may refuse to provide the information to anyone that proposes to use the information for other than the purpose of publishing a directory. Sprint believes that providers can adequately protect themselves from abuse through appropriate warranties and guarantees imposed as reasonable terms and conditions to the provision of the information. However, the Commission should make clear that "publishing a directory" covers such publication in any format or media; e.g., printed, electronic, CD-ROM.

VI. The existing CPNI requirements imposed on the BOCs and GTE should be continued.

The Commission seeks comment on whether the CPNI requirements that it imposed on the BOCs and GTE prior to adoption of the 1996 Act should be continued and tentatively concludes that nothing in the 1996 Act precludes the continued applications of these requirements. (¶ 38.) The requirements should be continued.

As the Commission notes, nonstructural safeguards, such as CPNI requirements, were imposed in the Computer III proceeding to "protect independent ESPs and CPE suppliers from discrimination by AT&T, the BOCs, and GTE."[10] Sprint believes that the concerns that drove the Commission to adopt these protective measures are valid concerns and Section 222 does not completely alleviate these concerns. The BOCs and GTE still possess the market power to gain anticompetitive advantages and thus the pre-existing CPNI requirements, that now supplement those imposed by Section 222, must be continued for the BOCs and GTE.[11]

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hand, are generally excluded from the white pages but are not excluded from directory assistance. Therefore, nonlisted numbers would not be provided for white page directories.

[10] NPRM at ¶ 40. However, Sprint is not advocating that the CPNI requirements be extended for AT&T.

[11] However, Sprint agrees with the Commission tentative conclusion at ¶ 40 that it need not extent these additional requirements to any other carrier. In Computer III, 2 FCC Rcd 3072 (1987) the Commission determined that

VII. The definition of CPNI requires clarification

The Commission did not ask for comment regarding the statutory definition of CPNI, however Sprint believes an issue with regard to this definition bears clarification. Obviously, Congress did not intend to impose an outright ban on or place an obligation to obtain consent on a carrier's right to market to its existing customer base. When the carrier is only using the carrier's customer name, service address and telephone number to identify customers for marketing purposes, Sprint does not believe the carrier is using CPNI as defined in the statute. While such information is proprietary to the carrier, until such information is related to network usage, it does not, under the 1996 Act, become CPNI. Accordingly, in Sprint's view, there should be no CPNI restrictions placed on a carrier's use of its customer list.

VIII. Conclusion.

Sprint applauds the Commission for issuing this NPRM. Sprint believes that interpretive regulations are necessary to appropriately apply Section 222. Interpretations made consistent with Sprint's comments above will balance the need for privacy and for fair competition as well as

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Independent Telephone Companies, other than GTE, did not possess the same degree of power as the BOCs and GTE and therefore did not possess the ability to gain a competitive advantage through the use of CPNI. There is nothing on the record in any proceeding to suggest that the Commission's conclusion was wrong.

provide customers with an understanding of their CPNI rights, and provide carriers with an understanding of their CPNI obligations.

Respectfully submitted,

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June 11, 1996

CERTIFICATE OF SERVICE

I, Melinda L. Mills, hereby certify that I have on this 11th day of June, 1996, sent via U.S. First Class Mail, postage prepaid, or Hand Delivery, a copy of the foregoing "Comments of Sprint Corporation" in the Matter of Implementation of the Telecommunications Act of 1996, Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information, CC Docket No. 96-115, filed this date with the Acting Secretary, Federal Communications Commission, to the persons on the attached service list.

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